



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF I-N-

DATE: AUG. 14, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a post-doctoral researcher, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that a waiver of the job offer requirement, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner asserts that he is eligible for a national interest waiver under the *Dhanasar* framework.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884.¹ *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’t 1998) (NYSDOT).

foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.²

II. ANALYSIS

Although not addressed in the Director's decision, the record demonstrates that the Petitioner qualifies as a member of the professions holding an advanced degree.³ The sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

At the time of filing, the Petitioner was working as a Graduate Research Assistant at the [REDACTED]. The record indicates that shortly after filing this petition, he was offered and accepted a post-doctoral research fellow position at [REDACTED]. In addition, the Petitioner registered a company named [REDACTED] and serves as its President and only employee. For the reasons discussed below, we find the Petitioner has not established eligibility for a national interest waiver under the analytical framework set forth in *Dhanasar*.

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner proposes to continue his research in the field of computer aided drug discovery, focusing on the application of protein intrinsic disorder (IDP) properties. He states that he will continue this work, which he began during his doctoral studies at the [REDACTED] through his position at [REDACTED] and his company. The Petitioner submits letters of support which indicate the potential for his work to lead to the development of drugs to fight cancer. For example,

[REDACTED] Chair of the Department of Molecular Medicine at the [REDACTED], writes that he "recognized that [the Petitioner's] novel drug discovery platform and discovered drug leads are important not only for science but also for human health as traditional experiments depending on drug discovery are currently limited." Accordingly, we find that the Petitioner's proposed research at [REDACTED] applying computer aided drug discovery techniques has substantial merit.

To satisfy the national importance requirement, the Petitioner must demonstrate the "potential prospective impact" of his work. [REDACTED] of [REDACTED] who collaborated with the Petitioner and co-authored articles published in scientific journals with

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

³ The Petitioner submitted copies of two diplomas for degrees he earned at the [REDACTED] a Master of Science in Medical Sciences and a Master of Science in Bioinformatics and Computational Biology. See 8 C.F.R. § 204.5(k)(3)(i)(A).

him, states that the Petitioner's "forthcoming research will facilitate better understanding of molecular biology proteins, which will most definitely lead to new advances in medical research." The record establishes that the Petitioner's research work has been disseminated to other researchers in the field through publication in scientific journals and presentation at conferences, and therefore his proposed furtherance of this research at [REDACTED] has broader implications for his field.

Regarding the Petitioner's proposed activities with [REDACTED] he submitted a business plan in response to the Director's request for evidence (RFE) that describes the goals of the company, its business model, and projections for future employees and revenue. The company "aims to discover intractable disease drug leads applying unique computer-aided drug discovery technique." The Petitioner states that "most of [the] profits will come from [REDACTED] marketing," and asserts that "through research consulting, [REDACTED] will make background revenue." He also asserts that the "computer-aided drug discovery market will become \$7 billion, 5 years from now," and that target annual revenue for his company will grow to \$300,000 by 2020. Further, the Petitioner submits a letter from [REDACTED] an Associate Professor at the [REDACTED] who notes that there have been examples of multi-million dollar licensing deals between universities and pharmaceutical companies in the past. While the Petitioner has not sufficiently documented his claims to the size of the computer aided drug discovery market, or his specific company's potential positive economic benefits to the United States, he has established that the proposed development of anti-cancer drug leads based upon the novel drug discovery platform he developed would potentially have wider implications in the pharmaceutical industry and for human health.

Accordingly, as the Petitioner has documented the substantial merit and national importance of his proposed endeavor at [REDACTED] and through [REDACTED] we find that he meets the first prong of the *Dhanasar* framework.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. For the reasons discussed below, we find that the Petitioner does not meet this prong.

With regard to the Petitioner's proposed work with his business, [REDACTED] he submits the previously mentioned business plan, as well as South Korean patent applications for both the drug discovery platform the company will use, and for two chemical compounds which are potential anti-cancer drug leads.⁴ The record also includes evidence of the Petitioner's experience in conducting research, specifically in the area of intrinsic protein disorder, in the form of papers published in scientific journals and reference letters. However, this evidence does not show that his past experience as a researcher renders him well positioned to advance his proposed endeavor of starting, leading and growing a drug development company.

⁴ The Petitioner also submitted South Korean registrations for patents that are unrelated to his proposed endeavor.

In addition, the record does not demonstrate sufficient interest in the Petitioner's company or its products from investors, customers or others in the pharmaceutical industry to support a finding that he is well positioned to advance his business endeavor. The record includes a letter from [REDACTED]

[REDACTED] which indicates that he used the Petitioner's services as a "research consultant" through [REDACTED]. [REDACTED] states that, in addition to building a website for his business, the Petitioner "advised me [of the] biological meanings of cosmetics ingredients." This letter does not indicate that the Petitioner used his knowledge and experience in intrinsic disorder proteins or computer aided drug discovery in providing services to this client, and therefore does not help to establish that the Petitioner is well-positioned to advance his proposed endeavor, which is focused in those areas. Also, while [REDACTED] letter states that the Petitioner attended the 2017 [REDACTED]

[REDACTED] held by the [REDACTED] it does not indicate whether the Petitioner successfully attracted funding for his company at this event. Further, the Petitioner submitted a copy of messages he sent and received from an individual representing the 2017 [REDACTED]

[REDACTED] but there is no evidence that the Petitioner attended this event or received funding for his company. Accordingly, the Petitioner has not established that he is well-positioned to advance his proposed drug discovery business.

Turning to the Petitioner's research position at [REDACTED] in addition to the previously mentioned evidence regarding his education and experience in research in computer aided drug discovery and intrinsic disorder proteins, the record includes a signed offer letter and other materials relating to his position as a post-doctoral research fellow in the hospital's [REDACTED]

[REDACTED] The evidence indicates that through this position, the Petitioner will continue his research in developing a framework for drug discovery based upon IDPs. In describing the Petitioner's development of the drug discovery platform, [REDACTED] notes that this research was presented at the 2016 [REDACTED] conference, and led to the filing of the three previously mentioned South Korean patent applications. [REDACTED] also notes that the Petitioner's research "has provided the field with newfound information that will aid in the development of new drugs for a variety of diseases." In his letter, [REDACTED] Group Leader at the [REDACTED]

in [REDACTED] Belgium, writes that the Petitioner "will be able to add to the field's base of knowledge and generate progress in extending this line of research toward developing novel medical treatments based on IDPs." [REDACTED] of [REDACTED] states that the Petitioner's "forthcoming research will facilitate better understanding of [the] molecular biology of proteins, which will most definitely lead to new advances in medical research." However, while all of these letters are complimentary of the Petitioner's previous work, and predict that his future work will add further knowledge to his field, they do not establish that his prior work constitutes a record of success in this area of research.

On appeal, the Petitioner asserts that his research activity, including the publication of nine articles in scientific journals and the presentation of three papers at conferences, as well as the citation to that work by other researchers, stands as further evidence of his record of success.⁵ The record

⁵ The Petitioner submitted evidence from [REDACTED] in response to the Director's RFE which shows that his work

demonstrates that the Petitioner has conducted, published, and presented research in his field. While we recognize that research must add information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit, not every individual who has performed original research or coauthored patents will be found to be well positioned to advance his or her proposed research. Rather, we examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual's progress towards achieving the goals of the proposed research, record of success in similar efforts, or generation of interest among relevant parties supports such a finding. *Id.* at 890. The Petitioner has not shown that his research has been frequently cited by independent researchers or otherwise served as an impetus for progress in the field, or that it has otherwise generated substantial positive discourse in the broader medical science or pharmaceutical communities.

In his appeal brief, the Petitioner refers to a 2002 AAO non-precedent decision concerning a researcher in the field of liquid crystals who provided evidence of 16 independent citations to his work. However, we note that the referenced decision was adjudicated under a prior framework and the Petitioner has not explained the relevance of the number of citations of a researcher in a different field from his own, more than 15 years ago, in analyzing his own record of success. Moreover, this decision was not published as a precedent and therefore does not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case, and may be distinguishable (as is the case here) based on the evidence in the record of proceedings, the issues considered, and applicable law and policy.

While the Petitioner and his co-inventors have applied for patents based upon the development of the drug discovery platform and two drug leads, the record does not establish that they have led to the further commercial development of cancer fighting drugs based on the "curve ball" strategy. Nor does the evidence otherwise demonstrate that his work constitutes a record of success or progress in this area of research. Accordingly, we find that the Petitioner does not meet the second prong of the *Dhanasar* framework.

C. Balancing Factors to Determine Waiver's Benefit to the United States

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Here, the Petitioner claims that he is eligible for such a waiver because a labor certification would not account for his education, skills, and expertise in his field. In addition, he asserts that his contributions would be of such value to the pharmaceutical industry in the United States that he would benefit the United States despite the availability of qualified workers. However, as the Petitioner has not established that he is well positioned to advance his proposed

was cited to a total of 44 times, with one article accounting for 23 of those citations. The Petitioner does not, however, offer comparative statistics which would indicate how often other medical science researchers are cited, nor does the record otherwise demonstrate that his published and presented research constitutes a record of success, or indicates a level of interest in his work from relevant parties, that would be sufficient to meet this prong.

endeavor as required by the second prong of the *Dhanasar* framework, he is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite three prongs set forth in the *Dhanasar* analytical framework, we find that he has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

Cite as *Matter of I-N-*, ID# 1483750 (AAO Aug. 14, 2018)